

April 7, 2010

BOARD OF DIRECTORS

Co-Presidents

G. Vinson Hellwig
Michigan

Larry Greene
Sacramento, CA

Co-Vice Presidents

David Shaw
New York

Lynne A. Liddington
Knoxville, TN

Co-Treasurers

Mary Uhl
New Mexico

Merlyn Hough
Springfield, OR

Past Co-Presidents

Colleen Cripps
Nevada

Arturo J. Blanco
Houston, TX

Directors

Rick Brunetti
Kansas

Joyce E. Epps
Pennsylvania

Andrew Ginsburg
Oregon

Anne Gobin
Connecticut

Cheryl Heying
Utah

James Hodina
Cedar Rapids, IA

Cindy Kemper
Johnson County, KS

John S. Lyons
Kentucky

Richard Stedman
Monterey, CA

Executive Director

S. William Becker

Dear Representative:

On behalf of the National Association of Clean Air Agencies (NACAA), the association of air pollution control agencies in 52 states and territories and over 165 major metropolitan areas across the United States, we express our opposition to legislation currently before Congress that would constrain or rescind the authority of the U.S. Environmental Protection Agency (EPA) to regulate the emissions of greenhouse gases (GHGs) under the Clean Air Act.

NACAA believes that EPA is using its authorities under the Clean Air Act judiciously and wisely in order to address global warming and should retain the ability to do so in the future.

In 2007, the Supreme Court (*Massachusetts v. EPA*) ruled that GHGs were an air pollutant under the Clean Air Act and directed EPA to make a finding as to whether GHGs contribute to air pollution that may reasonably be anticipated to endanger public health or welfare or to conclude that the science was so uncertain that the agency was unable to make that determination. In December 2009, after a lengthy public process and thorough review of the science, EPA determined that GHGs do indeed contribute to air pollution that endangers public health and welfare.ⁱ Once that finding was made, the Clean Air Act required EPA to issue a rule controlling GHGs from new motor vehicles and engines. EPA and the Department of Transportation finalized this rule on April 1, 2010, which will affect vehicles beginning with MY 2012. NACAA supported this rulemaking,ⁱⁱ which resulted from an historic agreement among the federal government, states, automakers and auto workers. It will ensure that one national GHG emissions standard applies to the nation's cars between 2012 and 2016 and that GHG emissions from this sector are reduced substantially.

Once GHGs become a regulated pollutant under the Clean Air Act, then certain provisions are automatically triggered – namely the requirements for major new and modified stationary sources to obtain a “Prevention of Significant Deterioration” permit, and for existing facilities to obtain a Title V operating permit.

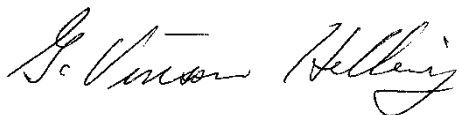
While state and local air pollution control agencies have generally supported EPA's proposals for exercising its authority to regulate GHG emissions under the Clean Air Act, including the requirements that stationary sources obtain permits, these agencies identified two areas where EPA could ensure a smooth and rational transition to this program.ⁱⁱⁱ In particular, state and local agencies recommended that EPA adopt an interpretation of the Clean Air Act that would delay application of a federal GHG permitting program until

2011, providing agencies additional time to align their programs with the federal rule. In addition, agencies suggested that EPA increase the size threshold of sources subject to the permitting program, limiting it to only the largest sources.

To EPA's credit, the agency has heeded the advice of state and local governmental agencies and outlined an approach that will provide an orderly transition as state and local agencies prepare for considering and analyzing permits with GHG provisions. On March 29, 2010, EPA announced that GHG emissions would not trigger federal permitting requirements until January 2, 2011. EPA Administrator Jackson, in letters to Senators Lisa Murkowski (R-AK) and Jay Rockefeller (D-WV) and in testimony before Congress, described how the agency plans to phase in the permitting of GHG emissions from stationary sources after that date. In the first half of 2011, only those sources that already must apply for permits because of their criteria pollutant emissions will have to consider their GHG emissions. Between the latter half of 2011 and 2013, the threshold for GHG permitting will be "substantially larger" than the 25,000-ton threshold initially proposed by the agency, likely 75,000 tons or higher. The earliest date smallest sources would be possibly subject to federal GHG permitting requirements would be 2016, and, even so, Administrator Jackson has stated that she has not decided that smaller sources would be subject to GHG permitting at that time.

In short, we believe that Congress should not rescind or constrain EPA's ability to use the Clean Air Act to address one of the most pressing environmental issues of our time, global warming. The agency has demonstrated its ability to use the legal authorities in the Clean Air Act in a sensible way and responded to our concerns by modifying its rules to accommodate the perspectives of state and local agencies. We thus oppose current legislative efforts to limit EPA's authority. If you have any questions, feel free to contact either of us or S. William Becker, NACAA's Executive Director.

Sincerely,



G. Vinson Hellwig
Michigan
Co-President of NACAA



Larry Greene
Sacramento, California
Co-President of NACAA

ⁱ NACAA submitted comments in support of the finding. "NACAA Final Comments on EPA's Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," (June 7, 2009), available at www.4cleanair.org.

ⁱⁱ "NACAA Comments on EPA's and the National Highway Traffic Safety Administration's (NHTSA's) Joint Proposal to Establish Light-Duty Vehicle GHG Emissions Standards and Corporate Average Fuel Economy Standards," (November 24, 2009), available at www.4cleanair.org.

ⁱⁱⁱ "NACAA Comments on EPA's Proposed Reconsideration of Its Prior Regulatory Interpretation of the Phrases "Subject to Regulation" and "Regulated Pollutant" Under the Clean Air Act," (December 7, 2009), and "NACAA Comments on EPA's Tailoring Rule Proposal to Temporarily Modify the Major Source Applicability Thresholds for GHG Emissions Under the Prevention of Significant Deterioration (PSD) and Title V Programs of the Clean Air Act," (December 28, 2009), available at www.4cleanair.org.